

IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No 1643 of 1989

Hon'ble MR.JUSTICE Y.B.BHATT

- =====
1. Whether Reporters of Local Papers may be allowed : YES
to see the judgements?
 2. To be referred to the Reporter or not? : NO
 3. Whether Their Lordships wish to see the fair copy : NO
of the judgement?
 4. Whether this case involves a substantial question : NO
of law as to the interpretation of the Constitution
of India, 1950 of any Order made thereunder?
 5. Whether it is to be circulated to the Civil Judge? : NO

VITHALBHAI DALSUKHBHAI SUTHAR

Versus

RAMESHCHANDRA C KOTHARI

Appearance:

TRIVEDI & GUPTA for Petitioner
MR TR MISHRA for Respondent No.1
NOTICE SERVED for Respondent No. 2

CORAM : MR.JUSTICE Y.B.BHATT

Date of decision: 22/02/2000

ORAL JUDGEMENT

1. This is a petition under Article 227 of the Constitution of India at the instance of the original employer, challenging the order passed by the Labour Court, Nadiad, wherein a restoration application for setting aside the dismissal of Reference for default, has been granted under Rule 26-A of Industrial Disputes

(Gujarat) Rules, 1966.

2. It appears that there was a pending reference between the parties being Reference No.174/85, which came to be dismissed by the Labour Court for default of attendance on the part of the workman, and consequently the workman had filed Misc. Application No.7/88 for setting aside the order of dismissal. This application is specifically made, and admittedly would lie only under Rule 26-A of the Industrial Disputes (Gujarat) Rules, 1966. The Labour Court allowed the Misc. Application and set aside the said order of dismissal. It is the grant of this Misc. Application which is the subject matter of the present petition.

3. Firstly it appears that the crucial aspect of the matter has escaped the attention of the Labour Court which granted the restoration application.

3.1 A plain reading of Rule 26-A indicates that an application under the Rule would lie only for the purpose of setting aside an exparte award. A plain reading of the definition of the word "award" under section 2(b) of the Industrial Disputes Act means "an interim or a final determination of any industrial dispute or any question relating thereto by any Labour Court". This would indicate that an award must be a determination on merits. A mere order dismissing the reference for default obviously cannot be said to be a decision on merits and therefore would not be covered by the definition of "award" within the meaning of section 2(b) of the I.D. Act. If the said order of dismissal does not qualify as an "award" obviously Rule 26-A would have no application.

3.2 Furthermore, Rule 26-A has a specific application and operates only in the field of an exparte award. Obviously the order "dismissed for default" would not be an exparte award, for the reason that both the parties were appearing in the proceeding before the Labour Court when the said order came to be passed. For this reason also Rule 26-A would have no application. Obviously, therefore, the application itself was incompetent and could not have been granted.

4. Even otherwise on the merits of the impugned order I find that the same amounts to a perversity in law.

5. On the facts of the case the Labour Court has clearly found that the causes stated by the applicant (the workman) in the application are not only

unjustified, but are false on facts. The Labour Court has further found that the workman has remained absent and has not attended the reference intentionally and deliberately. The Labour Court has also found that the workman has put forward in the application false facts and has also filed a false affidavit. On these findings, I am of the opinion that there was absolutely no justification for the Labour Court to allow the application. In spite of this, the Labour Court has allowed the application on a ground which has no nexus with the facts or law. The only reason given by the Labour Court for allowing the application is "to give him another chance". Statutory provisions which confer rights upon the parties are not intended to be interpreted in such a gratuitous manner. The reason assigned by the Labour Court for allowing the restoration application, as stated hereinabove, are no reasons in law and therefore are required to be quashed and set aside.

7. In the premises aforesaid, the order at Annexure-A impugned in the present petition is quashed and set aside. Rule is made absolute with no order as to costs.
